SOUTHERN UNION PRODUCTION CO.

IBLA 76-79 Decided November 17, 1975

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting first-drawn simultaneous oil and gas lease offer M 31830 (ND).

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Sole Party in Interest

   An oil and gas lease offer signed by an attorney-in-fact for the offeror is properly rejected where it is not accompanied by a separate statement of the attorney's interest or lack of interest in the offer and the lease, if issued, as required by departmental regulation.

2. Oil and Gas Leases: Applications: Drawings

   A first-drawn simultaneous drawing entry card which is defective because of non-compliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information.

APPEARANCES: William S. Jameson, Esq., Vice President and General Attorney for appellant, Southern Union Production Co.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Southern Union Production Co. appeals from the July 3, 1975, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting appellant's offer to lease for oil and gas parcel 978

located in North Dakota. The decision of the Montana State Office is very brief, indicating only that appellant's offer was rejected for failure of appellant company's attorney-in-fact to file a statement of interest as required by the appropriate regulations, 43 CFR 3102.6-1(a)(2) and (3). Those regulations provide:

> (2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one * * *.
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> (3) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact will be acceptable as compliance with the provisions of the regulations. (Emphasis added.)

Appellant argues that it submitted a power of attorney modeled on 43 CFR 3102.6-1(a)(3) with the offer to lease and consequently, it is unnecessary for its attorney-in-fact to submit a further statement disclaiming any interest in the lease. Appellant argues that this

is particularly true as the attorney-in-fact also signs a statement on the offer to lease indicating that the company is the sole party in interest.

[1] This is not a case of first impression. In two previous cases involving this precise issue the Department held that a separate statement of interest by the attorney-in-fact is required. Union Oil Co. of California, 71 I.D. 287 (1964); Husky Oil Co., A-30440 (October 27, 1965). The Department's decision in Union Oil was upheld when judgment was rendered in favor of the Department, Union Oil Co. of California v. Udall, Civ. No. 2595-64 (D. D.C., filed December 27, 1965). The Department stated in those cases that:

> * * * The fact that [3102.6-1(a)3] exempts the offeror in this case from the obligation to file the statement called for by [3102.6-1(a)(2)] does not absolve the attorney in fact from either the obligation to file the statements required of him or the consequences of his failure to do so.
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> * * * It is true that an offeror's statement that it is the sole party in interest in the offer and lease, if issued, would be indicated by an attorney in fact's statement that neither he nor any other person has a present interest in the offer or a present agreement or understanding to acquire an interest in the lease issued in response to the offer. But this does not mean that the sole party in interest statement satisfies the necessity for the attorney's statement that there is no agreement or understanding which will permit him or another person to acquire an interest in the offer or the lease, if issued, or in royalties or an operating agreement at some time in the future.
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> * * * It could be argued that, if the offeror states that there is no agreement, any statement by the attorney in fact to the same effect merely be duplicative. But the regulation nonetheless requires both to submit statements so as to insure as far as possible that a full and truthful disclosure will be made, and it does not permit the offeror to answer for the attorney in fact. By the same token, when the attorney in fact speaks for the offeror in making

> the sole party in interest statement, he cannot by that act speak for himself in satisfying the requirement of [3102.6-1(a)(2)]. 71 I.D. at 291-293.

[2] Appellant also argues that we should give effect to 43 CFR 1821.2-1(g), which allows late filings in certain instances. However, in this situation, the cited regulation is not applicable. The appellant's offer to lease was drawn first in a drawing of simultaneous offers. The regulation, 43 CFR 1821.2-1(g), is not applicable where the rights of a third party have intervened. In Ballard E. Spencer Trust, Inc., 18 IBLA 25, 27 (1974), 1/ we stated:

> Finally, and perhaps more important than any other consideration, is the right of a qualifying third party offeror to receive a noncompetitive lease. The Mineral Leasing Act specifically provides that lands to be leased noncompetitively must be leased to the first qualified person making application, whereas lands within the known geological structure of a producing oil or gas field shall be leased to the highest responsible qualified bidder. 30 U.S.C. § 226(b)(c) (1970). Under the simultaneous filing procedure for lands to be leased noncompetitively, all offers for the same land are considered to have been filed simultaneously, and priorities are determined by a drawing. If the first drawn offer is not acceptable by reason of some failure to comply with the regulation it cannot be accorded a priority as of the time it was officially filed. The next drawn offer in acceptable form earns priority as of the date and time of the simultaneous filing, and that offeror is first qualified as a matter of law to receive the lease. See 43 CFR 3112.2-1(a)(3); 43 CFR 3112.4-1; McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Duncan Miller, 17 IBLA 267, 268 (1974).

Under the simultaneous filing procedure an applicant may not "cure" the defects by submission of additional information after the drawing. Ballard E. Spencer Trust, Inc., supra. See 43 CFR 3112.5-1.

1/ Suit for judicial review pending sub nom. B.E.S.T., Inc. v. Morton (D. N.M., Civ-No 75-060).

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge